

NAYS—26

Alexander	Frist	Lugar
Allard	Grassley	Martinez
Bennett	Gregg	McCain
Bunning	Hagel	McConnell
Burr	Hatch	Murkowski
Chafee	Inouye	Salazar
Cochran	Isakson	Stevens
DeMint	Kyl	Sununu
Dole	Lott	

NOT VOTING—2

Corzine	Rockefeller
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The amendment (No. 1732) was agreed to.

Mr. NELSON of Nebraska. I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, on Thursday of last week, when Senator KOHL and I laid down the bill, I made the point that while there are no direct emergency aid funds in the bill, there are funds for many of the programs that would aid the victims of Hurricane Katrina and, frankly, programs they badly need.

To point out some of the increases over the fiscal year 2005 level that have impact on Katrina that are in this bill: \$16.6 million for food defense activities at FDA; \$36.2 million for food safety activities at USDA; nearly \$250 million in loan authorizations for rural housing, including housing repair; \$1.1 billion in rural utility loan authorizations for rural water and electric loans; \$22 million for the Women, Infants and Children feeding program; and \$5.6 billion in food stamps. These are all issues that affect the victims of Hurricane Katrina, and every State and every citizen will benefit from the programs in this bill. So I hope we can move forward with it in an expeditious fashion.

The USDA and FDA, the principal agencies funded in this bill, are working under very difficult conditions to address the needs in the hurricane-affected areas. FDA has had to transfer 50 employees from their regional office in New Orleans to Nashville, and USDA has had to relocate several hundred employees to keep its programs going.

So I hope we can do our best to effectively and quickly get this bill moving. I urge those who have amendments to the bill to come to the floor and help us with this bill.

We have one amendment which I understand has been cleared, and the Senator from Colorado has that amendment.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

AMENDMENT NO. 1737, AS MODIFIED

Mr. ALLARD. Mr. President, I send to the desk amendment No. 1737, as modified.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD] proposes an amendment numbered 1737, as modified.

Mr. ALLARD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 93, line 9, before the period at the end insert the following: "Provided further, That the Secretary, through the Agricultural Research Service, or successor, may lease approximately 40 acres of land at the Central Plains Experiment Station, Nunn, Colorado, to the Board of Governors of the Colorado State University System, for its Shortgrass Steppe Biological Field Station, on such terms and conditions as the Secretary deems in the public interest: *Provided further*, That the Secretary understands that it is the intent of the University to construct research and educational buildings on the subject acreage and to conduct agricultural research and educational activities in these buildings: *Provided further*, That as consideration for a lease, the Secretary may accept the benefits of mutual cooperative research to be conducted by the Colorado State University and the Government at the Shortgrass Steppe Biological Field Station: *Provided further*, That the term of any lease shall be for no more than 20 years, but a lease may be renewed at the option of the Secretary on such terms and conditions as the Secretary deems in the public interest".

Mr. ALLARD. Mr. President, very briefly, what this amendment does is it just allows Colorado State University to lease land from the Agricultural Research Service. It is not a controversial provision.

I ask unanimous consent it be adopted.

The PRESIDING OFFICER. Is there further debate on the amendment?

Is there objection to the unanimous consent request?

Without objection, it is so ordered. The amendment is agreed to.

The amendment (No. 1737), as modified, was agreed to.

Mr. BENNETT. I move to reconsider the vote with respect to the Allard amendment.

Mr. ALLARD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS

Mr. BENNETT. Mr. President, I know of no other amendments available to us. Unless someone wishes to speak in morning business between now and the time we routinely break for the policy lunches, I ask unanimous consent that the Senate stand in recess until 2:15 p.m.

There being no objection, the Senate, at 12:10 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SUNUNU).

The PRESIDING OFFICER. Under the previous order, the Democratic leader is recognized.

NOMINATION OF JOHN ROBERTS
TO BE CHIEF JUSTICE

Mr. REID. Mr. President, one of the Senate's most important constitu-

tional responsibilities is to provide advice and consent with respect to a President's nominations. The task is especially important when the nomination is an individual to be Chief Justice of the United States. No one doubts John Roberts is an excellent lawyer and a very affable person. But at the end of this process, frankly, I have too many unanswered questions about the nominee to justify a vote confirming him to this enormously important lifetime position.

The stakes for the American people could not be higher. The retirement of Justice O'Connor and the death of Chief Justice Rehnquist have left the Supreme Court in a period of transition. On key issues affecting the rights and freedoms of Americans, the Court is closely divided. If confirmed, Judge Roberts, who is only 50 years old, will likely serve as Chief Justice and leader of the third branch of the Federal Government for many decades.

The legal authority we will hand to Judge Roberts by this confirmation vote is awesome. We should only vote to confirm this nominee if we are absolutely positive that he is the right person to hold that authority. For me, this is a very close question, but I must resolve my doubts in favor of the American people whose rights would be in jeopardy if John Roberts turns out to be the wrong person for this job.

Some say the President is entitled to deference from the Senate in nominating individuals to high office. I agree that deference is appropriate in the case of executive branch nominees such as Cabinet officers. With some important exceptions, the President may generally choose his own advisers. In contrast, the President is not entitled to much deference in staffing the third branch of Government, the judiciary. The Constitution envisions that the President and the Senate will work together to appoint and confirm Federal judges. This is a shared constitutional duty. The Senate's role in screening judicial candidates is especially important in the case of Supreme Court nominees because the Supreme Court has assumed such a large role in resolving fundamental disputes in our civic life. Any nominee for the Supreme Court bears the burden of persuading the Senate and the American people that he or she deserves a confirmation to a lifetime seat on that Court.

First, I start by observing that John Roberts has been a thoughtful, mainstream judge on the DC Circuit Court of Appeals, but he has only been a member of that court for 2 years and has not confronted many cutting-edge constitutional issues, if any. As a result, we cannot rely on his current judicial service to determine what kind of a Supreme Court Justice he would be.

I was very impressed with Judge Roberts when I first met him in my office soon after he was nominated, but several factors caused me to reassess my initial view. Most notably, I was disturbed by the memos that surfaced

from Judge Roberts' years of service in the Reagan administration. These memos raise serious questions about the nominee's approach to civil rights. It is now clear that as a young lawyer, John Roberts played a significant role in shaping and advancing the Republican agenda to roll back civil rights protections. He wrote memos opposing legislative and judicial efforts to remedy race and gender discrimination. He urged his superiors to oppose Senator KENNEDY's 1982 bill to strengthen the Voting Rights Act and worked against affirmative action programs. He derided the concept of comparable worth and questioned whether women actually suffered discrimination in the workplace.

No one is suggesting John Roberts was motivated by bigotry or animosity toward minorities or women, but these memos lead one to question whether he truly appreciated the history of the civil rights struggle. He wrote about discrimination as an abstract concept, not as a flesh-and-blood reality for countless of his fellow citizens. The memos raised a real question for me whether their author would breathe life into the equal protection clause and the landmark civil rights statutes that come before the Supreme Court repeatedly. Nonetheless, I was prepared to look past these memos and chalk them up to the folly of youth. I looked forward to the confirmation hearings in the expectation that Judge Roberts would repudiate those views in some fashion. However, the nominee adopted what I considered a disingenuous strategy of suggesting that the views expressed in those memos were not his, even at the time the memos were written. That is what he said. He claimed he was merely a staff lawyer reflecting the positions of his client, the Reagan administration.

Anyone who has read the memos can see that Roberts was expressing his own personal views on these important policy matters. In memo after memo, the text is very clear. It is simply not plausible for the nominee to claim he did not share the views he personally expressed. For example, there is a memo in which he refers to the Equal Employment Opportunity Commission as "un-American." If Judge Roberts had testified that this was a 20-year-old bad joke, I would have given the memo no weight. Instead, he provided a tortured reading of the memo that simply doesn't stand up under any scrutiny.

In another memo, Judge Roberts spoke about a Hispanic group President Reagan would soon address and he suggested that the audience would be pleased to know the administration favored legal status for the "illegal amigos" in the audience—illegal amigos. After 23 years, couldn't he acknowledge that was insensitive, that it was wrong? The use of the Spanish word "amigos" in this memo is patronizing and offensive to a contemporary reader. I don't condemn Judge Roberts for using the word "amigos" 20 years ago

in a nonpublic memo, but I was stunned when at his confirmation hearing he could not bring himself to express regret for using that term or recognize that it might cause offense.

My concerns about these Reagan-era memos were heightened by the fact that the White House rejected a reasonable request by committee Democrats for documents written by Judge Roberts when he served in the first Bush administration. After all, if memos written 23 years ago are to be dismissed as not reflecting the nominee's mature thinking, it would be highly relevant to see memos he had written as an older man in an even more important policymaking job. The White House claim of attorney-client privilege to shield these documents is utterly unpersuasive. Senator LEAHY, ranking member of the Judiciary Committee, asked Attorney General Gonzales for the courtesy of a meeting to discuss the matter and was turned down. This was simply a matter of stonewalling.

The failure of the White House to produce relevant documents is reason enough for any Senator to oppose this nomination. The administration cannot treat the Senate with such disrespect without some consequence. In the absence of these documents, it was especially important for the nominee to fully and forthrightly answer questions from committee members at his hearing. He failed to do so adequately. I acknowledge the right—indeed, the duty—of a judicial nominee to decline to answer questions regarding specific cases that will come before the Court to which the witness had been nominated. But Judge Roberts declined to answer many questions more remote than that, including questions seeking his views of long-settled legal precedent.

Finally, I was very swayed by the testimony of civil rights and women's rights leaders against the confirmation. When a civil rights icon such as John Lewis, one of my American heroes, appears before the committee and says John Roberts was on the wrong side of history, I take note. Senators should take notice.

I personally like Judge Roberts. I respect much of the work he has done in his career. For example, his advocacy for environmentalists in a Lake Tahoe takings case several years ago was good work. In the fullness of time, he may well prove to be a fine Supreme Court Justice. But I have reluctantly concluded that this nominee has not satisfied the high burden of justifying my voting for his confirmation based on the current record.

Based on all these factors, the balance shifts against Judge Roberts. The question is close, and the arguments against him do not warrant extraordinary procedural tactics to block his nomination. Nevertheless, I intend to cast my vote against this nomination when the Senate debates the matter next week.

I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006—Continued

AMENDMENT NO. 1747

Mr. DURBIN. Mr. President, I believe this has been cleared on the other side.

Mr. President, I send an amendment to the desk on behalf of Senator REID and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for Mr. REID, proposes an amendment numbered 1747.

Mr. DURBIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for minimum prices for milk handlers)

On page 173, after line 24, insert the following:

SEC. 7 ____.(a) Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following:

“(M) MINIMUM MILK PRICES FOR HANDLERS.—

“(i) APPLICATION OF MINIMUM PRICE REQUIREMENTS.—Notwithstanding any other provision of this section, a milk handler described in clause (ii) shall be subject to all of the minimum and uniform price requirements of a Federal milk marketing order issued pursuant to this section applicable to the county in which the plant of the handler is located, at Federal order class prices, if the handler has packaged fluid milk product route dispositions, or sales of packaged fluid milk products to other plants, in a marketing area located in a State that requires handlers to pay minimum prices for raw milk purchases.

“(ii) COVERED MILK HANDLERS.—Except as provided in clause (iv), clause (i) applies to a handler of Class I milk products (including a producer-handler or producer operating as a handler) that—

“(I) operates a plant that is located within the boundaries of a Federal order milk marketing area (as those boundaries are in effect on the date of enactment of this subparagraph);

“(II) has packaged fluid milk product route dispositions, or sales of packaged fluid milk products to other plants, in a milk marketing area located in a State that requires handlers to pay minimum prices for raw milk purchases; and